



U.S. Citizenship
and Immigration
Services

MAI



FILE:



Office: NEBRASKA SERVICE CENTER

Date: OCT 22 2004

IN RE:

Applicant:



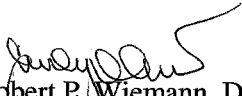
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for 

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director determined that the applicant failed to establish he: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that he entered the United States on November 11, 1998. The applicant also provides additional evidence, which includes additional proof that he used an alias, in an attempt to establish his continuous residence and physical presence during the qualifying period.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Continuously physically present, as defined in 8 C.F.R. §244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Continuously resided, as defined in 8 C.F.R. §244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed his initial application on June 30, 2003.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. See 8 C.F.R. § 244.2(g).

On July 30, 2003, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his date of entry and his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States from January 5, 1999 to the date of filing the application. The applicant was also instructed to provide evidence that he and [REDACTED] are one and the same person. The applicant, in response, provided evidence in an attempt to establish his residence and physical presence in the United States, including evidence in an attempt to establish that he and [REDACTED] are one and the same person.

The applicant did not present any evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that he entered the United States on November 11, 1998, and started working under the name of [REDACTED]. According to the applicant, CIS has acknowledged that he was present in the United States before December 31, 1998. The applicant provides additional evidence that he and [REDACTED] are one and the same person. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on July 30, 2003 to submit evidence establishing his qualifying residence and physical presence in the United States. In response, the applicant submitted the following documentation:

1. Two personal statements in which the applicant claims that he began to use the name of [REDACTED] after his arrival in the United States on November 11, 1998.
2. Copies of pay stubs in the applicant's name, for pay periods ending December 12, 1998 and January 10, 1999.
3. Copies of a 2002 W-2, Wage and Tax Statement, in the name of [REDACTED] and [REDACTED].
4. Copies of pay stubs in the name of [REDACTED] dated December 21, 2001, February 1, 2002, and February 15, 2002.
5. Copies of Order Express money transfer receipts dated December 26, 2001 and April 13, 2002.
6. Two copies of a letter from [REDACTED] dated August 15, 2003, stating that B and B Maintenance, Inc., had employed [REDACTED] since December 16, 2001.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods. According to the director, the applicant failed to establish that he and [REDACTED] are one and the same person. As a result, the director found that minus the evidence in the name of [REDACTED] there is a gap of continuous residence and physical presence from January 5, 1999 to December 26, 2001. Therefore, the director denied the application. On appeal, the applicant furnished:

1. A copy of an employment identification card in the name of [REDACTED].
2. Copies of money transfer receipts dated June 10, 1999, March 16, 2002, and July 31, 2002.
3. Copies of pay stubs in the name of [REDACTED] dated January 31, 2001, September 6, 2002, November 22, 2002, December 20, 2002, January 17, 2003, February 21, 2003, and August 15, 2003.

The copy of the employment identification card with the photograph of the applicant under the name of [REDACTED] is the only evidence provided by the applicant that establishes that he used that alias. However, even if the identification card is accepted as true and accurate, no evidence was provided to show the applicant's presence in the United States from December 12, 1998 to January 31, 2000.

The applicant has failed to submit sufficient evidence to establish his qualifying residence since December 30, 1998, and physical presence in the United States from January 31, 2000 to the date the application was filed. Therefore, he has not established that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

Furthermore, as discussed above, the applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.